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8 **UNITED STATES DISTRICT COURT**

9 **NORTHERN DISTRICT OF CALIFORNIA, SAN FRANCISCO DIVISION**

10
11 A.B., a minor, By and Through W.F.B., His
Guardian Ad Litem,

12 Plaintiffs,

13 vs.

14 SAN FRANCISCO UNIFIED SCHOOL
15 DISTRICT,

16 Defendant.

CASE NO. C 07-4738 (PJH)

STIPULATION TO CONTINUE DEADLINE
FOR REPLY BRIEFS, ALLOW BRIEF SUR-
REPLY AND CONTINUE HEARING ON
CROSS-MOTIONS FOR SUMMARY
JUDGMENT; [PROPOSED] ORDER

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18 Plaintiff A.B. (Plaintiff) and defendant San Francisco Unified School District ("District")
19 hereby provide this Court with the following Stipulation and Proposed Order to modify the
20 briefing schedule on the parties' cross-motions for summary judgment and continue the hearing on
21 those motions. This Stipulation also provides for Defendant to file a brief sur-reply to additional
22 evidence to be discussed in Plaintiff's reply brief.

23 1. This action is an appeal from a special education due process proceeding under the
24 Individuals with Disabilities Education Act (20 U.S.C. §1400 *et seq.*). Plaintiff filed his
25 Complaint on September 14, 2007.

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C 07-4738 (PJH)

STIPULATION TO CONTINUE DEADLINE FOR REPLY BRIEFS, ALLOW BRIEF SUR-REPLY AND
CONTINUE HEARING ON CROSS-MOTIONS FOR SUMMARY JUDGMENT; [PROPOSED] ORDER

1 2. On December 20, 2007, the parties attended a Case Management Conference at
2 which time the Court set the following schedule for this matter:

3 April 16, 2008 Parties to file cross-motions for summary judgment

4 May 14, 2008 Parties to file opposition briefs

5 May 28, 2008 Parties to file reply briefs

6 June 25, 2008 Hearing on cross-motions for summary judgment, 9:00 a.m.

7 3. Plaintiff obtained a copy of the administrative record from the Office of
8 Administrative Hearings. The record currently is 3603 pages long. Both parties reviewed the
9 entire record prior to Plaintiff lodging it with the Court.

10 4. On April 11, 2008, Plaintiff lodged a copy of the record with the Court.

11 5. On April 16, 2008, the parties filed their cross-motions for summary judgment.

12 6. While preparing Plaintiff's opposition to the District's motion, counsel for Plaintiff
13 discovered that the testimony of two witnesses was missing from the official record.

14 7. Plaintiff's counsel has spoken to the Office of Administrative Hearings which has
15 indicated that it has a recording of the missing transcript, specifically the morning of March 2,
16 2007, and that it will have a transcript of the recording expedited. OAH can deliver the missing
17 transcript pages to Plaintiff's counsel no later than May 28, 2008.

18 8. The Ninth Circuit has held that parties may supplement the administrative record
19 when gaps are discovered. *Ojai Unified School District v. Bion Jackson*, 4 F.3d. 1467 (9th Cir.
20 1993) cert denied 115 S.Ct. 90 (1994).

21 9. Based on the discovery of missing testimony and Plaintiff's interest in citing to this
22 evidence as part of his argument in this case, the parties stipulate to and request the following
23 modification of the schedule in this matter:

24 June 4, 2008 Plaintiff to reproduce and provide copies of the administrative record to
25 opposing counsel and the Court, sequentially bates labeled to the
26 administrative record already on file

27 June 18, 2008 Parties to file their reply briefs

1 June 25, 2008 District to file a sur-reply of no more than four (4) pages to specifically
2 and solely address any argument presented by Plaintiff based on the
3 supplemental evidence

4 July 23, 2008 Hearing on cross-motions for summary judgment; 9:00 a.m.

5 10. Good cause exists for the brief continuances in this case, specifically to allow the
6 Court to consider the full administrative record and to allow Plaintiff to discuss and the District to
7 respond to the evidence presented by two of Plaintiff's witnesses in the administrative proceeding.

8 DATED: May 20, 2008

9
10 By: /s/ Roberta Savage
11 Roberta Savage,
12 Attorneys for Plaintiff, A.B.

13 DATED: May 20, 2008

FAGEN FRIEDMAN & FULFROST, LLP

14
15 By: /s/ Kimberly A. Smith
16 Kimberly A. Smith
17 Attorneys for Defendant, SAN FRANCISCO
UNIFIED SCHOOL DISTRICT

18 I, Kimberly A. Smith, am the ECF User whose ID and password are being used to file this
19 STIPULATION TO CONTINUE DEADLINE FOR REPLY BRIEFS, ALLOW BRIEF SUR-
20 REPLY AND CONTINUE HEARING ON CROSS-MOTIONS FOR SUMMARY JUDGMENT.
21 In compliance with General Order 45, X.B., I hereby attest that Roberta Savage has concurred in
22 this filing.

23 DATED: May 20, 2008

FAGEN FRIEDMAN & FULFROST, LLP

24
25 By: /s/ Kimberly A. Smith
26 Kimberly A. Smith
27 Attorneys for Defendant, PAJARO VALLEY
UNIFIED SCHOOL DISTRICT

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8 **UNITED STATES DISTRICT COURT**

9 **NORTHERN DISTRICT OF CALIFORNIA, SAN FRANCISCO DIVISION**

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11 A.B., a minor, By and Through W.F.B., His
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16 Defendant.

CASE NO. C 07-4738 (PJH)

[PROPOSED] ORDER

17
18 **ORDER**

19 The Court, having reviewed and considered the STIPULATION TO CONTINUE
20 DEADLINE FOR REPLY BRIEFS, ALLOW BRIEF SUR-REPLY AND CONTINUE
21 HEARING ON CROSS-MOTIONS FOR SUMMARY JUDGMENT and finding good cause,
22 does hereby **ORDER** that the parties' reply briefs shall be filed by June 18, 2008. Defendant San
23 Francisco Unified School District shall be permitted to file a sur-reply of no more than four (4)
24 pages, no later than June 25, 2008, to specifically and solely address any argument presented by
25 Plaintiff based on the supplemental evidence being lodged with the Court.

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1 The Court further **ORDERS** that the hearing on the parties' cross-motions for summary
2 judgment shall be continued to July 23, 2008 at 9:00 a.m.

3 IT IS SO ORDERED.

4
5 DATED: _____

JUDGE PHYLLIS J. HAMILTON
UNITED STATES DISTRICT JUDGE